IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 340 OF 2004

ANTONIO DIAS AND 3 ORS., ...Petitioners

Versus

MRS. PHILOMENA FERNANDES,NAGOA-GOA. ....Respondents

Mr. S. S. Kantak, advocate for the petitioners.
Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, advocate for the respondent.

Coram:- R. M. LODHA, J.

Date:- 19th August, 2005

P.C.

Heard Mr. Kantak, learned counsel for the petitioners and Mr. D'Costa, learned Senior Counsel for the respondent.

The Ad-hoc Additional District and Asst. Sessions Judge (Fast Track Court), Mapusa, dismissed the petitioners' appeal. Aggrieved thereby the present Writ Petition has been filed.

The learned counsel for the petitioners submits that the Appeal Court was not jusitfied in holding that the inventory proceedings cannot be nullified by Misc. Civil Application. He would urge that in Article 1427 of the Portuguese Civil Code where the recission of partition is dealt with, the word "suit" has been loosely used and that would include a miscellanoeus application.

Article 1427 reads thus:-

"The recission of judicial partition confirmed by judgment, become final for want of appeal, may be applied for:

1. When any of the conditions mentioned in the Article 771 are satisfied;
2. When there had been preterition or omission in joining any of the co-heirs and it is found that other parties

acted with fraud and bad faith, whether such malicious conduct is in respect of the preterition, or as to how the partition was prepared.

The recission on the grounds mentioned in clause 1, may be obtained by filing appeal or revision; that founded on clause 2 by way of suit, ordinary or summary, as per the value.

Sole Paragraph: A suit for recission or suit for amendment referred to in this Article and in the preceeding, shall be the appendant of the inventory."

The case for recission admittedly is sought to be made out by the petitioners under clause 2. The aforesaid Article provides that if the recission is founded on clause 2, it can be so obtained by way of suit, ordinary or summary, as per the value. Obviously, the word "suit" has been used in Article 1427 as is understood under the Code of Civil Procedure, though not defined.

In the circumstances, the view taken by the Appeal Court that the inventory proceedings cannot be rescinded by Misc. Civil Application cannot be said to suffer from any error of law.

The Writ Petition does not deserve to be admitted. Dismissed in limine.

R. M. LODHA, J.